

### **III. CERTIFICATION AND ASSIGNMENT PROCEDURES**

#### **QUALIFICATION STANDARDS**

The Committee has adopted qualification standards which attorneys must meet in order to receive assignments. Only those who have demonstrated their qualifications and have been certified by the Committee may be assigned cases and compensated by the Committee. Attorney certification may be subject to ongoing legal education requirements, and/or periodic recertification, depending on the type of assignment.

Those wishing to apply should consult the standards set forth herein and follow the procedures prescribed. Attorneys accepting cases for which they are not certified will not be compensated for those cases.

#### **PERFORMANCE STANDARDS**

The Committee has also adopted standards governing performance in various types of cases. Attorneys accepting assignments must agree to handle their cases consistent with the guidelines. Complaints alleging attorney failure to comply with the Performance Guidelines will be investigated pursuant to Complaint Procedures adopted by the Committee. A copy of these procedures can be found in this manual.

## **A. CRIMINAL**

### **1. DISTRICT COURT CASES**

Attorneys who wish to accept misdemeanors and concurrent felonies in the District Court must (1) apply for admission into a county bar advocate program; (2) be accepted into the panel of attorneys of a county bar advocate program; and (3) complete a required training program. For information on becoming a bar advocate, contact the program in the counties in which you wish to practice. A directory of these programs is included at the end of this manual. No attorney may be a member of more than two bar advocate programs, except attorneys certified as bilingual by the Committee.

#### Training Requirement

The training requirement is satisfied by attendance at a five-day seminar, Zealous Advocacy. The program is administered through Massachusetts Continuing Legal Education (MCLE) at various locations throughout the state several times a year. Applications are in the MCLE course catalogue. A schedule of training programs and registration information can be obtained by contacting MCLE (617/350-7006) or the CPCS Training Unit (617/482-6212).

#### Certification

Attorneys who complete the training requirement are certified to represent indigent adults who are charged with misdemeanors and felonies that are within the final jurisdiction of the District Court as set forth in G.L. c.218, Sec. 26. Attorneys may also represent indigent defendants charged with Superior Court felonies in the district court for arraignment and bail hearings only. If the attorney is not Superior Court certified, s/he must immediately notify the Bar Advocate Program of the need for prompt reassignment of a bindover felony case after the arraignment.

Dangerousness hearings under G. L. c. 276, Sec. 58A are considered substantial proceedings in the case, requiring the same certification as the case in chief. Dangerousness hearings in bindover felony cases must be handled by Superior Court certified attorneys only. If a dangerousness hearing in a bindover felony case is requested by the prosecutor, assigned counsel lacking certification to handle the case in chief should request a brief continuance and immediately notify the Bar Advocate Program to promptly reassign the case.

In order to handle probable cause hearings in District Court or Superior Court jurisdiction felonies (other than arraignment and bail hearing), attorneys must be certified for Superior Court cases. Additional certification is also required for juvenile delinquency, Youthful Offender, CHINS, and care and protection cases.

#### Assignment of Cases

District Court cases are assigned through the county bar advocate programs.

## Performance Requirements

Attorneys who accept District Court cases, must represent their clients at all stages of the criminal proceedings in the District Court and the District Court Jury of Six Session. In the event of a final conviction in the District Court Jury of Six session, it is the responsibility of the trial attorney to file a Notice of Appeal, Motion to Withdraw, and a Motion for Appointment of Substitute Counsel for Appeal. Trial counsel should then notify the CPCS Private Counsel Appeals Assignment Unit of the need for appellate counsel to be assigned.

By accepting assignments on District Court cases attorneys agree to abide by the CPCS Performance Standards Governing Representation of Indigents in Criminal Cases, which are found in this manual.

## **2. MURDERS AND SUPERIOR COURT CRIMINAL MATTERS, INCLUDING PROBABLE CAUSE FELONIES IN DISTRICT COURTS**

The Committee has adopted qualification standards for murder cases and Superior Court criminal matters, including probable cause felonies in district courts. Attorneys who wish to be eligible for assignments in these matters must apply in writing to the Chief Counsel of the Committee demonstrating that they meet the standards set. They will be notified of their status and, if they are approved, they will be placed on the panel. Those standards follow.

### **FIRST- AND SECOND-DEGREE MURDER CASES**

Attorneys who wish to be certified to accept first- and second-degree murder cases must be individually approved by the Chief Counsel of CPCS. Each applicant must meet the minimum requirements set forth below. In addition, the Chief Counsel may consider any and all additional information that s/he deems relevant to an appropriate decision on each application. In reaching this decision, the Chief Counsel receives a recommendation on each application from a Certification Advisory Board consisting of senior private practitioners from around the state.

Training Requirement: None

#### Minimum Requirements:

- (1) Five years' criminal litigation experience
- (2) Familiarity with practice and procedure of Massachusetts criminal courts
- (3) Lead counsel during the preceding five years in at least ten jury trials of serious and complex cases, at least five of which have been life felony indictments, in which the cases resulted in a verdict, decision or hung jury

- (4) Familiarity with and experience in the utilization of expert witnesses, including psychiatric and forensic evidence
- (5) Attendance at specialized training programs (such as MCLE or bar association criminal practice programs, National Institute for Trial Advocacy, National Criminal Defense College)

Application Procedure:

Attorneys seeking murder assignments should complete and submit an application form obtainable from the Committee's Certification Unit, as well as any additional information relevant to the above-stated requirements.

A list of cases which meet requirement (3) above must be included, giving the name of the case, indictment numbers and charges, names of judges and prosecutors, dates of trial, and a short statement of each case which includes a description of the major issues. Specific cases describing the applicant's utilization of expert witnesses should be included. In addition, the applicant should submit the names, dates, and sponsors of training programs which meet requirement (5) above, as well as the names and addresses of three criminal defense practitioners familiar with the applicant's work. The letter and attachments should be sent to:

CPCS Chief Counsel  
470 Atlantic Ave., Suite 700  
Boston, MA 02210  
Attn: Certification Coordinator for Criminal Cases

Applicants will be notified of the decision of the Chief Counsel within 8-12 weeks.

Certification for murder assignments is valid for a term of 4 or 5 years, after which each attorney may seek recertification. Eight (8) hours per year of relevant legal education are required to maintain this certification. Attorneys should maintain records of their continuing legal education in the event they apply for recertification.

Assignment of Cases:

Under the provisions of c.211D, Sec. 8, the Chief Counsel will assign murder cases to attorneys certified to handle such cases, subject to the approval of the justice making the determination of indigence.

### Performance Requirements:

Attorneys who accept first- and second-degree murder cases must represent their clients at all stages of the criminal proceedings except the appeal of a conviction to the Appeals Court or Supreme Judicial Court. In the event of a conviction, however, it remains the responsibility of the trial attorney to file a Notice of Appeal, a Motion to Withdraw, a Motion to Appoint Substitute Counsel for Appeal, and to request CPCS to assign successor counsel for the appeal.

In addition to representing the client in Superior Court, the attorney who accepts a murder assignment must provide representation at the District Court arraignment and probable cause hearing and at any sentence appeal before the Appellate Division of the Superior Court.

By accepting assignments on murder cases, attorneys agree to abide by the CPCS Performance Guidelines Governing Representation of Indigents in Criminal Cases, which are found in this manual.

### **3. SUPERIOR COURT JURISDICTION CASES**

In order to be certified to accept Superior Court cases (that is, any charge which is beyond final jurisdiction of the District Court as set out in G.L. c.218, sec. 26), attorneys must be individually approved by the Chief Counsel of CPCS.

Attorneys who seek to obtain the approval of the Chief Counsel must meet the minimum requirements set forth below. In addition, the Chief Counsel may consider any and all additional information that s/he deems relevant to an appropriate decision on each application.

Certification for Superior Court assignments is valid for a term of 4 or 5 years, after which each attorney may seek recertification. Eight (8) hours per year of relevant legal education are required to maintain this certification. Attorneys should maintain records of their continuing legal education in the event that they apply for recertification.

#### Training Requirement:

There is no training prerequisite for initial certification; 8 hours of CLE per fiscal year is required for recertification.

#### Minimum Requirement:

Applicants who meet the criteria described in any one of the following four categories are eligible to apply to the Chief Counsel for approval for Superior Court cases. To apply, the applicant must:

(A) Be certified by CPCS to accept murder cases;

OR

(B) Meet the minimum requirements for certification for murder cases (outlined in this manual);

OR

(C) Have tried at least six Jury of Six or Superior Court criminal jury trials to verdict in the last five years as lead counsel;

OR

(D) Have other significant experience which demonstrates qualification to accept Superior Court assignments and demonstrates familiarity with the practice and procedures in the Massachusetts criminal courts.

Application Procedure:

Attorneys seeking Superior Court assignments should complete and submit an application form obtainable from the Committee's Certification Unit, as well as any additional information relevant to the above-stated requirements.

Applicants who are applying pursuant to section (B), (C), or (D) above should fully describe the cases which meet the requirements, giving the names of the cases, indictment numbers and charges, names of judges and prosecutors, dates of trials, and a short statement of each case which includes a description of the major issues. Specific cases describing the applicant's utilization of expert witnesses should be included. In addition, the applicant should submit the names, dates, and sponsors of training programs, as well as the names and addresses of three criminal defense practitioners familiar with the applicant's work. The letter and attachments should be sent to:

CPCS Chief Counsel  
470 Atlantic Ave., Suite 700  
Boston, MA 02210  
Attn: Certification Coordinator for Criminal Cases

The Chief Counsel will notify the applicant when a decision has been made.

Certification for Superior Court assignments is valid for a term of 4 or 5 years, after which each attorney may seek recertification. Eight (8) hours per year of relevant legal education are required to maintain this certification.

Assignment of Cases:

Superior Court certified attorneys may be assigned Superior Court jurisdiction cases in District Court as bar advocate duty attorneys, or may receive assignments from bar advocate programs immediately after arraignments handled by bar advocate duty attorneys who are not Superior Court certified. Superior Court certified attorneys may also be assigned cases in Superior Court after direct indictment.

Performance Requirements:

Attorneys who accept Superior Court cases must represent their clients at all stages of the criminal proceedings except the appeal of a conviction to the Appeals Court or Supreme Judicial Court. In the event of a conviction, however, it remains the responsibility of the trial attorney to file a Notice of Appeal, a Motion to Withdraw, and a Motion to Appoint Substitute Counsel for Appeal, and to notify CPCS of the need for appellate counsel to be assigned.

In addition to representing the client in Superior Court, the attorney who accepts a Superior Court case must provide representation at the probable cause hearing or any other District Court proceeding and any sentence appeal before the Appellate Division of the Superior Court.

By accepting assignments on Superior Court cases, attorneys agree to abide by the CPCS Performance Guidelines Governing Representation of Indigents in Criminal Cases, which are found in this manual.

#### **4. JUVENILE DELINQUENCY CASES**

Attorneys who wish to accept assignments on juvenile delinquency cases must complete a required training program.

##### Training Requirement:

The training requirement is satisfied by attendance at a five-day seminar, Zealous Advocacy. The program is administered through Massachusetts Continuing Legal Education (MCLE) at various locations throughout the state several times a year. Applications are in the MCLE course catalogue. A schedule of training programs and registration information can be obtained by contacting MCLE (617/350-7006) or the CPCS Training Unit (617/482-6212).

##### Certification:

Attorneys who complete the training requirement are certified to represent clients in juvenile delinquency proceedings in the Juvenile Courts and the juvenile session of District Courts, except for potential Youthful Offender matters.

Potential Youthful Offender matters involve defendants between the ages of 14 and 17 on the date of the alleged offense, who are either:

- 1) charged with an offense included in the CPCS list of presumptive Youthful Offender matters (see below, under Youthful Offender Certification) regardless of whether the prosecutor obtains an indictment; or
- 2) charged with any other offense, and the prosecutor indicts the juvenile.

If the juvenile (aged 14-17) is charged with an offense on the CPCS Presumptive Youthful Offender list, regardless of whether the prosecutor seeks to indict the juvenile, then a juvenile delinquency certified attorney may represent the client at the arraignment only. The attorney must notify the court and local bar advocate program to assign a Youthful Offender attorney who will represent the client after the arraignment.

If the juvenile (aged 14-17) is charged with an offense not included in the CPCS Presumptive Youthful Offender list, and the prosecutor obtains an indictment, the juvenile delinquency certified attorney may represent the client only until the indictment is obtained. Once the juvenile is indicted, the attorney must immediately notify the court and local bar advocate program to assign a Youthful Offender attorney who will represent the client after the post-indictment arraignment.

Separate certification is required to handle CHINS, care and protection, and termination of parental rights cases (see sections of this manual regarding these cases).



### Assignment of Cases:

The assignment of delinquency cases varies from county to county. Check with your local bar advocate program to learn the practice in your county.

### Performance Requirements:

Attorneys who accept assignment on juvenile delinquency cases must represent their clients at all stages of the delinquency proceeding in the Juvenile and District Court.

In the event of a final conviction in the Juvenile Jury Session or the District Court Jury of Six Session, it is the responsibility of the trial attorney to file a Notice of Appeal and Motion to Withdraw and to notify CPCS of the need for appellate counsel to be appointed.

By accepting juvenile delinquency cases, attorneys agree to abide by the CPCS Performance Standards Governing Representation of Indigent Juveniles in Delinquency and Criminal Cases, which are found in this manual.

## **5. YOUTHFUL OFFENDER CASES**

Attorneys who wish to accept assignments in Youthful Offender cases must (1) meet the minimum requirements, (2) apply and be accepted to the panel and (3) complete a training program.

### Application Procedure:

In order to apply, attorneys must have tried at least five (5) jury trials to completion within the past five years as lead counsel. (Attorneys who have tried at least four jury trials to completion in the past five years, and who also have additional documentation demonstrating outstanding credentials, experience and recommendations may also apply.)

Attorneys with the above minimum qualifications who are interested in being trained and becoming a member of this panel must send a letter in application to Helen Fremont, detailing their most recent (and most serious, or complicated) five jury trials tried to completion in which they were lead counsel, including the following information: name of the case; date of the trial; name of the court, judge, and prosecutor; charges; length of trial; issues presented; experts or other forensic specialists used as witnesses; and any other relevant material. Additionally, attorneys must send a recent writing sample of 3-5 pages.

Your letter of application should be sent to:

Helen Fremont, Staff Counsel  
Committee for Public Counsel Services  
470 Atlantic Avenue, Suite 470  
Boston, MA 02210

### Training Requirement:

Upon your acceptance to the training, you will be notified of the next scheduled training program.

### Certification:

Attorneys certified for Youthful Offender cases are qualified to accept assignments in the following cases:

For the specific charges listed below, if the defendant was between the ages of 14 and 17 on the date of the alleged offense, only attorneys who are certified for Youthful Offender cases may be assigned to these cases, regardless of whether the prosecutor intends to indict the defendant.

<u>Charges Requiring YO Certification</u>	<u>Statute</u>	<u>Offense Code</u>
Aggravated Rape	C. 265, s. 22	631
Armed Assault w/int Rob/Murder	C. 265, s. 18	623, 624, 625
Armed Assault in a Dwelling	C. 265, s. 18A	626
Armed Burglary and Assault on Occupant	C. 266, s. 14	200
Armed Robbery	C. 265, s. 17	621, 622
Assault w/int Maim with Inj.	C. 265, s. 14	611
Assault w/int Maim/ Kill/ Murder	C. 265, s. 15	S08, 613, 614
Assault w/int Rape	C. 265, s. 24	636, 637, 638, 639
Attempted Murder	C. 265, s. 16	S46
Attempted Arson	C. 266, s. 5A	S80
Burglary and Assault in a Dwelling	C. 266, s. 14	201
Burning a Dwelling House	C. 266, s. 1	500
Burning a Public Building	C. 266, s. 2	501, 502
Carrying Firearm w/o Lic	C. 269, s. 10(A,D)	702, 703
Gun Cases: paragraph (a), (c), or (d) of section 10 or section 10E of C. 269		702, 703, 704 705, 706, 707
Home Invasion	C. 265, s. 18C	666
Indecent Assault and Battery F, H	C. 265, s. 13B, 607, 610	S41, 606
Kidnapping	C. 265, s. 26	640
Manslaughter	C. 265, s. 13	603
Mayhem	C. 265, s. 14	612
MV Homicide	C. 90, s. 24G	050, 052, 053 054, 055, 056, 057
Poss Shotgun Barrel Under 18"/Machine Gun	C. 269, s. 10C	704, 705, 706
Rape	C. 265, s. 22, 22A, 25	632, 633, 634, 635
Statutory Rape	C. 265, s. 23	S01

Only the above enumerated charges will require assignment of a Youthful Offender attorney, REGARDLESS of the prosecutor's intent to indict.

Attorneys who are not Youthful Offender certified, but who are juvenile delinquency certified, may accept assignment of the above listed cases FOR ARRAIGNMENT ONLY. Delinquency certified attorneys must immediately notify the court and the bar advocate program that they can only represent the client at arraignment; assignment of a Youthful Offender certified attorney must be made immediately after the arraignment.

**ALL OTHER DELINQUENCY CASES:** Attorneys who are certified to handle juvenile delinquency cases can handle all other delinquency cases NOT LISTED ABOVE **until** the prosecution indicates its intention to prosecute the defendant as a Youthful Offender. **At that time**, if the attorney is not Youthful Offender certified, s/he must withdraw from the case, notify the court and bar advocate program, and a Youthful Offender attorney must be reassigned to the case.

#### Assignment of Cases:

CPCS provides Juvenile and District Courts with lists of attorneys who are certified for these cases. The courts make the assignments from the lists of certified attorneys.

#### Performance Requirements:

Attorneys who accept assignment on Youthful Offender cases must represent their clients at all stages of the proceeding in the Juvenile/District Court.

In the event of a final conviction, it is the responsibility of the trial attorney to file a Notice of Appeal and Motion to Withdraw and to notify CPCS of the need for appellate counsel to be appointed.

By accepting Youthful Offender cases, attorneys agree to abide by the CPCS Performance Standards Governing Representation of Indigent Juveniles in Delinquency and Criminal Cases, and the CPCS Performance Standards Governing Representation of Indigents in Criminal Cases, which are found in this manual.

## **6. CRIMINAL APPEALS AND OTHER POST-CONVICTION MATTERS**

Attorneys who wish to accept assignments for appeals and other post-conviction matters must be individually approved by the Director, Legal Resources and Support Services or Chief Counsel of CPCS and must complete a training requirement.

### Training Requirement:

Applicants for certification to accept these cases must complete an 8-hour Appeals and Post-Conviction Training Program offered by CPCS. Registration information is found in the CPCS Certification Bulletin.

### Application Procedure:

The applicant should submit a letter to the CPCS Director of Legal Resources and Support Services, explaining in detail why his/her experience qualifies him/her for appeals and post-conviction assignments. A summary of appellate and trial experience should be included as well as a resume. Two legal writing samples should be submitted with the letter of application, at least one of which addresses a criminal law issue. Additionally, the applicant should submit names, addresses, and phone numbers of at least two references who are familiar with the applicant's professional qualifications and his or her abilities in legal research and writing, criminal defense, and appellate practice.

The letter should be sent to:

Director, Legal Resources & Support Services  
Committee for Public Counsel Services  
470 Atlantic Avenue, Suite 700  
Boston, MA 02210

The applicant will be notified when a decision has been made.

### Certification:

Attorneys certified for Appeals and Post-Conviction assignments are qualified to receive assignments on appeals, new trial motions, motions for relief from unlawful restraint, post-appeal motions to revise or revoke, and other matters related to post-conviction proceedings.

### Assignment of Cases:

The CPCS Post-Conviction Appellate Assignment Unit will assign appellate and post-conviction cases to attorneys certified to handle such cases.

### Performance Requirements:

By accepting these cases attorneys agree to abide by the Performance Standards Governing The Representation of Clients on Criminal Appeals and Post-Conviction Matters, which are found in this manual.

## **B. CIVIL**

### **1. MENTAL HEALTH CASES**

The Committee has adopted performance standards for civil commitment proceedings, for guardianship proceedings in which the authority to administer extraordinary medical treatment is sought (so-called "Rogers" cases), and for appeals in such cases. Attorneys who wish to be eligible to accept assignments in such cases must agree to abide by these standards and must complete certain training requirements established by the Committee for Public Counsel Services. In addition, attorneys wishing to accept assignments in proceedings in which authorization is sought to treat residents of long-term care facilities and those involving the recommitment of persons found to be "sexually dangerous" must also meet certain training requirements. Training schedules for each certification category will be published in Lawyers Weekly, in the Committee's Certification Bulletin, and on the Mental Health Litigation Units Web Site ([www.state.ma.us/cpcs/mhp](http://www.state.ma.us/cpcs/mhp)).

### **CIVIL COMMITMENT AND "ROGERS" CASES**

#### Certification:

Attorneys who wish to be certified to accept assignments in civil commitment proceedings and guardianship proceedings in which the authority to administer extraordinary medical treatment is sought must complete a two-part training requirement. To maintain certification, attorneys must complete at least 8 hours of approved continuing legal education annually. A listing of approved programs will be published periodically.

#### Training Requirement:

Applicants for certification must complete an eight-hour training program, "CPCS Mental Health Proceedings and Advocacy for Assigned Counsel," offered by CPCS through MCLE. In addition, applicants must also complete an eight-hour training program on the clinical aspects of mental illness and treatment, conducted by the University of Massachusetts Medical Center Department of Psychiatry under the auspices of CPCS. Please see MCLE catalogues for dates and locations of training.

#### Assignment of Cases:

CPCS provides Superior Courts, District Courts and Probate Courts with lists of certified attorneys from which the Courts make appropriate assignments.

#### Performance Requirements:

By accepting mental health case assignments, attorneys agree to abide by the CPCS Civil Commitment and Performance Standards and Performance Standards for Guardianship with Authority to Administer Extraordinary Medical Treatment. These Performance Standards are found in this manual.

## **2. MENTAL HEALTH APPEALS**

#### Certification:

Applicants for mental health appellate certification must first be certified to accept assignments in civil commitment and "Rogers" cases, and must then complete a one-day training program Appealing Child Custody and Mental Health Cases offered through MCLE.

#### Assignment of Cases:

Assignments are made by CPCS upon notification by trial counsel of the filing of an appeal.

#### Performance Requirements:

By accepting mental health case assignments, attorneys agree to abide by the applicable CPCS standards, copies of which are found in this manual.

## **3. SEXUALLY DANGEROUS PERSON DISCHARGE REVIEWS**

#### Certification:

Males currently serving one-day-to-life sentences at the Treatment Center for Sexually Dangerous Persons at Bridgewater may petition the Superior Court Department for discharge, once annually. Applicants for certification must first be certified to accept assignments in civil commitment and Rogers cases (see above) and must then complete the three-hour training program Annual Review of Sexually Dangerous Persons Commitments, offered through MCLE. See MCLE catalogs for dates and locations of training.

#### Assignment of Cases:

Assignments are made by the Superior Court Department from the list of certified counsel provided by CPCS.

#### Performance Requirements:

By accepting assignments in these cases, attorneys agree to abide by applicable CPCS Performance Standards, copies of which are found in this manual.

#### **4. NURSING HOME ROGERS CASES**

##### Certification:

Applicants for certification must first be certified to accept assignments in civil commitment and Rogers cases (see above), and must then complete a three-hour training program, Medicating Nursing Home Residents (offered through MCLE). See MCLE catalogs for details.

##### Assignment of Cases:

Assignments are made by the Probate Court from the list of certified attorneys provided by CPCS.

##### Performance Requirements:

By accepting assignments in civil commitment cases, Rogers cases and mental health appeals, attorneys agree to abide by the applicable CPCS Performance Standards, which are found in this manual.

## **5. CHILDREN AND FAMILY LAW CASES - TRIAL LEVEL (Care and Protection, CHINS and Termination of Parental Rights Petitions)**

### **Trial Panel Certification and Training Requirements**

Attorneys who wish to be certified to accept trial level state intervention assignments must complete an application for Children and Family Law (CAFL) trial panel certification. Applications are available from the CAFL Certification Coordinator and are published periodically in the MCLE catalogue. Accepted trial panel applicants must complete a five-day trial panel certification training course. Thereafter, attorneys must work with a mentor assigned through the CAFL program.

Once trial panel certified, attorneys must maintain certification through the annual completion of 8 hours of approved continuing legal education on a fiscal year basis. The fiscal year begins on July 1 and concludes on June 30. Newly certified trial panel attorneys are expected to satisfy the continuing education requirement in the fiscal year subsequent to the year certification was received.

Continuing legal education requirements may be satisfied by attendance of 8 hours of legal education at CAFL sponsored training through MCLE or in various regions throughout the Commonwealth, the CPCS Annual Training, or equivalent training programs. To obtain credit for attending such an equivalent program, submit a request for approval together with a comprehensive description of the program, including its length and a syllabus describing its contents and faculty, to the CAFL Program of CPCS. Attorneys are urged to seek approval prior to attending such programs.

CLE certificates or proofs of attendance must be filed with the CAFL program on or before June 30th of each fiscal year by mailing certificates or proofs of attendance to Beth Doherty-Sayers, CAFL Certification Coordinator, CPCS, 470 Atlantic Avenue, Suite 700, Boston, MA 02210.

Attorneys who are fully certified and whose certifications are in good standing may accept assignments on care and protection cases, CHINS cases, termination of parental rights cases, and child custody cases in which there is state intervention.

Attorneys who accept State Intervention/Child Custody and CHINS cases must represent their clients at all stages of the proceeding including a final appeal to the Appeals Court or Supreme Judicial Court until such time as appellate counsel is assigned by the CAFL program. By accepting assignments on these cases attorneys agree to abide by the CPCS Performance Standards Governing the Representation of Children and Parents in Child Welfare Cases.

### **Assignment of Cases:**

CPCS provides Juvenile, District, and Probate Courts with state and county-wide lists of attorneys who are trial panel certified to accept CAFL trial level assignments. Courts make



individual assignments from the list of trial-panel certified attorneys.

#### Performance Requirements:

By accepting assignments in Children and Family Law Program cases attorneys agree to abide by all applicable CPCS Performance Standards Governing the Representation of Children and Parents in Child Welfare Cases.

### **6. CHILDREN AND FAMILY LAW APPEALS**

Attorneys who wish to be certified to accept assignments for appeals of state intervention cases must (a) meet the minimum requirements, (b) apply to the Children and Family Law (CAFL) appellate panel and be accepted to participate in the training requirement, and (c) complete the training requirement.

#### Minimum Requirements:

Applicants must have two years of legal experience in the field of state intervention law or substantial appellate experience, and demonstrated proficiency in legal research and writing..

#### Application Procedure:

Applications are available from the CAFL Certification Coordinator. Applicants must send in a completed application, a resume, two legal writing samples, and two references from individuals who have knowledge of the applicant's qualifications, character, integrity, thoroughness and research and writing abilities.

CPCS will notify applicants of whether they have been accepted for training. Upon acceptance for training, attorneys will be given a schedule of training programs.

#### Training Requirement:

Appellate panel applicants must attend a one-day appellate panel certification course and either (a) be certified to accept trial level CAFL assignments or (b) attend the first three days of the five-day trial panel certification course. The appellate panel certification course will be offered at least once per year and advertised in the Massachusetts Lawyers Weekly; the trial panel certification course is offered several times per year. Trial panel applications are published periodically in MCLE catalogues.

#### Appellate Panel Performance Requirements:

Attorneys who have satisfied the course training requirements are provisionally certified through the filing of at least their first two appellate briefs. The attorney must work cooperatively with a mentor for each appellate assignment. If the attorney completes two briefs but has no oral argument on the cases, then a mentor shall be available to the attorney for the attorney's first two

oral arguments. The attorney must notify the mentor as soon as the appellate assignment has been received, consult with the mentor as soon as the trial transcripts are available and work with the mentor on an ongoing basis to identify appellate issues and develop a research strategy. The attorney must notify the mentor of all relevant dates for the appeal, including dates for docketing, briefing and oral argument. The attorney shall provide drafts of each brief to the mentor, allowing sufficient time for the mentor to edit the drafts and make recommendations to improve the quality of the brief. The mentor must authorize the filing of the final copy.

The mentor will report to the CAFL program regarding the work of the attorney after the attorney has completed two briefs. The CAFL program will then determine whether the attorney will (a) be certified and permitted to take additional appellate assignments without supervision of a mentor, (b) be permitted to take one or two additional assignments with continued mentor supervision, or (c) not be permitted to take additional appellate assignments and will lose his or her provisional certification.

Attorneys who accept CAFL appeals agree to abide by the CPCS Performance Standards Governing Representation of Clients in Child Welfare Appeals, which are found in this manual. Attorneys must submit copies of all filed briefs to the Children and Family Law Program, or, if the case is closed before briefing, attorneys must notify the Children and Family Law Program of the reason the appellate assignment closed.

#### Assignment of Cases:

After the trial court assigns CPCS to an appeal, cases are assigned to appellate panel members by the CAFL Appellate Assignment Coordinator.

## **7. MINORS SEEKING JUDICIAL CONSENT FOR ABORTION**

The Committee has adopted performance standards governing representation of minors seeking abortion. Attorneys who wish to be eligible to accept assignments in these cases must agree to abide by these standards and complete a training session.

### **Training Requirement:**

The training requirement is satisfied by attending a two-hour training program, Judicial Consent for Minors, which is co-sponsored by CPCS, the National Lawyers Guild, and the Women's Bar Association of Massachusetts. The program is offered at various locations throughout the state periodically. A contribution of \$25 for materials is requested.

For information about training programs and registration information, contact Jamie A. Sabino, Esq., 52 Western Avenue, Cambridge, MA 02139. (617) 492-5085.

### **Assignment of Cases:**

CPCS provides a list of certified attorneys to the Planned Parenthood Counseling and Referral Program, certain additional clinics and some courts. The majority of the assignments are made by Planned Parenthood and clinics except for Hampden County, where the assignments are made by the court.

### **Performance Requirements:**

By accepting assignments on these cases attorneys agree to abide by the CPCS Performance Standards for Attorneys Representing Minors in Section 12S Hearings, which are found in this manual.

## **8. SEX OFFENDER REGISTRY BOARD CASES**

In order to receive case assignments in Sex Offender Registry Proceedings, attorneys must (1) be individually approved for Superior Court criminal cases by the Chief Counsel, and (2) complete a training program.

### **Training Requirement:**

Applicants for certification must complete the Representation in Sex Offender Registry Proceedings course offered by CPCS. Additional training presentations may be required due to changes in the law. Mentors with civil litigation experience will be made available by CPCS for consultation. Applications to fulfill this training requirement can be obtained from the CPCS Training Unit in Boston (617) 482-6212.

### **Application Procedure:**

Before an attorney can complete the training requirement s/he must already be certified for Superior Court case assignments. The applicant must then apply by submitting the completed training application form to the attention of the CPCS Training Coordinator.

### **Assignment of Cases:**

Cases will be assigned by the CPCS Boston office. Notices of Assignment will be sent by FAX, with next day confirmation acceptance by counsel required. Attorneys without FAX numbers, but who wish to receive these assignments, should telephone Patricia Wheeler at (617)482-6212 to make arrangements for notification.

Attorneys are requested to inform CPCS of the number of case assignments that can be made per quarter. Please inform Patricia Wheeler at (617) 482-6212, FAX (617) 988-8484.

### **Performance Requirements:**

Performance standards specific to these cases will be published in the CPCS Training Bulletin.

By accepting assignments in Sex Offender Registry Proceedings, attorneys agree to abide by the General Principles of Representation set out in the Performance Guidelines Governing Representation of Indigents in Criminal Cases (which can be found in this manual), as well as additional performance standards specific to Sex Offender Registry proceedings, when published by CPCS.

## **9. WAIVERS OF TRAINING REQUIREMENTS**

CPCS has instituted training requirements for certification in most categories of cases in order to assure that each attorney accepting assignments has the necessary information to provide high quality representation. The training requirement is rarely waived.

A request for a waiver will be considered only if the applicant has exceptional experience in the field in which s/he seeks certification. The applicant requesting a waiver must submit a letter to the Director of the appropriate certification panel explaining in detail why the training requirement should be waived. The letter should describe the applicant's litigation experience, familiarity with practice and procedure of Massachusetts courts, and familiarity with the area of substantive law in which the waiver is sought. Specific information should be provided about cases in which the applicant has provided representation, including court, docket number, names of judges and opposing counsel, dates of court appearances, and a description of the issues in each case. Specific cases describing the applicant's utilization of expert witnesses should also be included. Information about specialized training courses the applicant has attended or taught should be provided, including the names, dates and sponsors of the training programs.

Waiver of a training requirement is within the discretion of the Chief Counsel, who may consider any additional information s/he considers relevant.

